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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

CARMIESHRA Y. GORMAN, Plaintiff and Appellant, v. REGINA WRIGHT COLE, Defendant and Respondent.	B279707 (Los Angeles County Super. Ct. No. BC505976)

APPEAL from a judgment and order of the Superior Court of Los Angeles County, Donna Field Goldstein, Judge. Affirmed.

Carmieshra Y. Gorman, in pro. per., for Plaintiff and Appellant.

Richardson, Fair & Cohen and Stephen Kalpakian, for Defendant and Respondent.

Appellant Carmieshra Gorman, representing herself at trial as she does on appeal, pursued a claim against respondent Regina Cole for personal injury arising from a 2011 automobile accident. Cole admitted liability, and the sole issue at trial was damages. The jury awarded appellant $12,000 for past medical costs, lost earnings and noneconomic damages after appellant had rejected a settlement offer of $19,000 made under Code of Civil Procedure section 998. The court denied appellant's motions for a new trial and judgment notwithstanding the verdict (JNOV), and awarded costs to Cole.

Appellant challenges the judgment and the trial court's rulings on appeal, but fails to demonstrate error through coherent legal arguments. Accordingly, we treat the points raised as forfeited. Moreover, the jury's verdict was supported by substantial evidence, and to the extent we discern the rulings to which appellant takes exception, we can find no error or abuse of discretion. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On April 28, 2011, Cole was at a stop sign on Ladera Park Avenue. While attempting to turn left onto La Brea Avenue, she collided with the front passenger side of appellant's vehicle, which was going straight on La Brea. Both vehicles were driven away after the incident, and neither party sought immediate medical care.

In April 2013, appellant, acting in propria persona, filed a complaint against Cole for personal injury.[1] The complaint contended that appellant

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[1] The complaint also named Cole's insurer, the Interinsurance Exchange of the Automobile Club (the Auto Club). The trial court granted the Auto Club's motion for judgment on the pleadings in 2015. Appellant moved for reconsideration and then appealed. This court affirmed the judgment in *Gorman v. Interinsurance Exchange of the Auto Club* (March 28, 2016, B265176) [nonpub. opn.].

Appellant's original complaint included claims for "reckless misconduct" and "willful assault," and stated that Cole, who was diagnosed as suffering from Huntington's Disease eight months after the accident, had willfully disregarded the safety of others by operating a motor vehicle while impaired. During pretrial proceedings, in order to expedite the trial,

required ongoing medical care as a result of the accident, that she experienced chronic and severe pain and suffering and mental distress, and that she struggled with performing daily activities. Prior to trial, Cole stipulated to liability.

Evidence introduced at trial established that shortly after the accident, appellant began a series of treatments with Fidelis Nwude, a chiropractor, for neck and back pain. When this treatment program ended in August 2011, Dr. Nwude believed appellant had no active symptoms or problems.[2] Appellant testified, however, that the relief afforded by Dr. Nwude was only temporary, that the neck and back pain continued, and that she began to experience sharp pain in her hip as well. She went to see her regular care physicians, who recommended pain medication and physical therapy. Appellant further testified that she was healthy prior to the accident and an active tennis player, playing three to four hours per day, three to four days per week. At the time of trial in October 2016, some five and a half years after the accident, appellant was undergoing chiropractic treatment, and had begun seeing a cardiologist for stress. She said she had tried but was unable to resume playing tennis. She claimed to have adjusted her work hours, and to have become unable to work as many hours as she had in the past. She introduced a number of pay records into evidence, but did not specify the amount by which she believed her earnings had diminished.

Appellant called Lance Fenton, the chiropractor who had begun treating her in October 2011 and was continuing to provide her treatment at the time of trial. Dr. Fenton expressed the opinion that appellant was continuing to experience symptoms from the April 2011 accident, including back, neck and hip pain. He testified that it was possible for injuries sustained in an automobile accident to lie dormant for a period of time, and then flare up when the patient attempted to return to normal activity. He also testified that a back injury could lead to hip pain if the patient tried to adjust her body movement.

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appellant stipulated to dismissing the claims for intentional tort/reckless misconduct and agreed to go forward with a negligence claim only.

[2] Dr. Nwude did not testify. His records were introduced.

The defense called a chiropractor, Michael Stahl, who testified that he had reviewed appellant's medical records, including those generated by Dr. Nwude. Dr. Nwude had found no serious injury when he first examined appellant, and had concluded everything was normal in his last examination in August 2011, four months after the accident. Dr. Nwude placed no restrictions on her at that time. An MRI taken during her treatment with Dr. Nwude showed no abnormalities. Dr. Stahl expressed the opinion that the accident-related injuries had resolved, and that appellant did not need care related to the accident after the conclusion of the course of treatment with Dr. Nwude. Dr. Stahl further opined that appellant's years of playing tennis multiple hours per day was the probable cause of her hip pain, not the accident, noting that she did not report hip pain until months after the accident.

The evidence also established that appellant was receiving certain public benefits that could have been cut off had she earned more compensation at work, and that she had begun decreasing her hours at work prior to the accident. It was further established that none of her doctors recommended she take time off from work following the accident. She had, however, taken time off work at her therapist's recommendation in 2014 -- three years after the accident -- for stress-related issues at her job, and had brought a successful worker's compensation claim. In response to a 2013 interrogatory, appellant stated she had experienced only $451.60 in lost wages.

The jury awarded appellant $12,000 -- $450 for past loss of earnings, $6,550 for past medical expenses and $5,000 for past noneconomic loss. Nothing was awarded for future damages. Appellant moved for a judgment notwithstanding the verdict (JNOV) and a new trial. The court denied both motions.

Based on her pretrial offer of $19,000 under Code of Civil Procedure section 998, Cole submitted a costs memorandum seeking $18,136 in costs and fees, including $8,475 in expert witness fees. The court awarded Cole costs. This appeal followed.

DISCUSSION

Rule 8.204 of the California Rules of Court requires that appellate briefs "support each point by argument and, if possible, by citation of authority." Each point should be made separately, under a heading "showing the nature of the question to be presented and the point to be made." (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 656.) Where an appellant raises a point but fails to affirmatively demonstrate error through reasoned argument and citations to authority and the record, we treat the point as forfeited. (*Bullock v. Philip Morris USA, Inc.* (2008) 159 Cal.App.4th 655, 685; *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785; see, e.g., *Taylor v. Nabors Drilling USA, LP* (2014) 222 Cal.App.4th 1228, 1247-1248 [issue forfeited where single paragraph in brief devoted to the issue was "devoid of meaningful legal analysis"]; *Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1119 ["[The] failure of an appellant in a civil action to articulate any pertinent or intelligible legal argument in an opening brief may, in the discretion of the court, be deemed an abandonment of the appeal."].) The appellant must also present an adequate record for review, as we can neither review the sufficiency of the evidence nor make a finding that the court erred without it. (*Oliveira v. Kiesler* (2012) 206 Cal.App.4th 1349, 1362.)

"It is a fundamental rule of appellate review that the judgment appealed from is presumed correct and ""all intendments and presumptions are indulged in favor of its correctness."" [Citation.]"" (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852, quoting *State Farm Fire & Casualty Co. v. Pietak* (2001) 90 Cal.App.4th 600, 610.) To overcome this presumption, an appellant's burden "requires more than a mere assertion that the judgment is wrong. 'Issues do not have a life of their own: If they are not raised or supported by argument or citation to authority, [they are] . . . waived.' [Citation.]" (*Benach*, *supra*, at p. 852.) "It is not our place to construct theories or arguments to undermine the judgment and defeat the presumption of correctness." (*Ibid.*)

Appellant represented herself below and represents herself in this appeal. A self-represented litigant is "held to the same restrictive rules of procedure as an attorney" and is "entitled to the same, but no greater, consideration than other litigants and attorneys [citations]." (*Nelson v.*

Gaunt (1981) 125 Cal.App.3d 623, 638-639; accord, *County of Orange v. Smith* (2005) 132 Cal.App.4th 1434, 1444.)

Appellant's brief is essentially incoherent. It jumps from point to point, contains multiple issues under each heading, and fails to include legal analysis or citation to pertinent legal authority. The appellant's appendix is disorganized and fails to include many of the pleadings and papers necessary to properly address the issues touched on in her brief. Accordingly, we treat all issues raised as forfeited. Nonetheless, we briefly address the issues we can discern.

A. *Evidence Concerning Cole's Condition*

Cole was diagnosed with Huntington's Disease at the end of 2011, and was advised to discontinue driving sometime thereafter. Appellant's briefs suggest she was hampered in her ability to present evidence supporting her theory that as a result of Cole's condition, Cole did not apply her brakes prior to hitting appellant's vehicle, resulting in appellant's vehicle being struck with substantial force. The record reflects that the court permitted appellant to introduce considerable evidence of Cole's condition. The court denied Cole's motion in limine to exclude evidence of her medical condition. At trial, appellant was permitted to question Cole about any symptoms she had been suffering that might have affected her driving at the time of the accident. In addition, appellant called David Carr, M.D., a professor of medicine and neurology, who reviewed Cole's medical records and testified concerning the onset of the neurological symptoms that would have preceded the diagnosis and the likely effect on Cole's ability to drive on the date of the accident. During Dr. Carr's testimony, the court overruled privacy objections raised by the defense, and later denied a defense motion to strike based on the assertion that Dr. Carr's testimony was irrelevant.

B. *Limitation on Expert Witness Testimony*

Defense counsel objected to Dr. Fenton's testifying as an expert concerning causation, as he had been designated to testify concerning

appellant's complaints and injuries only. The court found that causation was beyond the scope of the expert designation.[3]

Section 2034.260 of the Code of Civil Procedure requires the parties to exchange, on demand, expert witness information, including "[a] brief narrative statement of the general substance of the testimony that the expert is expected to give." (*Id.*, subd. (c)(2).) As the Supreme Court stated in *Bonds v. Roy* (1999) 20 Cal.4th 140: "[T]he exclusion sanction . . . applies when a party unreasonably fails to submit an expert witness declaration that fully complies with the content requirements of [the statute], including the requirement that the declaration contain '[a] brief narrative statement of the general substance of the testimony that the expert is expected to give.'" (*Id.* at pp. 148-149.) In view of this settled principle, the court did not err in limiting Dr. Fenton's testimony.

C. *Jury Selection*

Appellant contends the court erred in failing to dismiss several jurors for cause: Juror No. 15, Juror No. 29, and Juror No. 31. The record indicates that a discussion was held concerning Juror 15's command of the English language; that the court examined her and concluded she spoke and understood English well; and that neither party asked that she be removed. The record further indicates that defense counsel, not appellant, requested that Juror Nos. 29 and 31 be excused for cause. The court denied the requests, finding the jurors' comments indicated they would follow the law and evidence. When the jury was empaneled, both sides had exhausted their peremptory challenges, but neither defense counsel nor appellant expressed dissatisfaction with the jury as constituted.

To preserve an objection to the trial court's failure to excuse a juror for cause, a party must exhaust his or her peremptory challenges and express dissatisfaction with the jury as finally empaneled. (*People v. Manibusan* (2013) 58 Cal.4th 40, 61; *People v. Bonilla* (2007) 41 Cal.4th 313, 339.) Here,

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[3] Despite the limitation, Dr. Fenton was permitted to express his opinion as appellant's treating physician that her back and neck injuries were sustained in the car accident, and that the initial back and neck injury led to the subsequent hip pain.

appellant expressed dissatisfaction with neither the individual jurors discussed in her briefs nor with the panel as a whole. Accordingly, any issue concerning the composition of the panel was forfeited. In any event, we have no basis to doubt the court's conclusions that these jurors were unbiased and qualified to serve. (See *People v. Avila* (2006) 38 Cal.4th 491, 529 ["[A] trial court's rulings on motions to exclude for cause are afforded deference on appeal, for 'appellate courts recognize that a trial judge who observes and speaks with a prospective juror and hears that person's responses (noting, among other things, the person's tone of voice, apparent level of confidence, and demeanor), gleans valuable information that simply does not appear on the record.'"]; *Alcazar v. Los Angeles Unified School Dist*. (2018) 29 Cal.App.5th 86, 100 [affirming order denying challenges for cause where challenged jurors "made conflicting statements about their ability to remain impartial," but did not express views indicative of "'an unalterable preference'" in favor of defendant].) The court's rulings were based on direct interaction with the jurors, and its conclusions were supported by the record.

D. *Special Verdict*

Prior to deliberations, the jury was given a special verdict form, asking: "1. Was [Cole's] negligence a substantial factor in causing harm to [appellant]?" If the answer was "yes," the jury was instructed to "answer question 2." The next question -- the only other question on the form -- asked the jury to calculate damages, but due to the parties' error, was labeled "3." After deliberating briefly, the jurors asked whether they were meant to "go to no. 3." The court revised the form by striking out the number "3" and replacing it was the number "2." It proposed having the bailiff take copies of the revised form to the jurors, along with the instruction to "use the attached revised verdict form and return to the court the original white verdict form." The court asked whether either party had an objection to its solution; neither party objected. The jury continued deliberations, and subsequently returned a special verdict form in which the first question was answered in the affirmative and the second question included damages for appellant's past economic and noneconomic damages as specified above.

Appellant contends the error in the verdict form and the court's solution "prejudiced the verdict against her." There is nothing to indicate the jurors were confused by the form. To the contrary, the question to the court illustrates they understood the original form contained an error, and that they were expected to answer the damages question notwithstanding the erroneous reference to the wrong number. By sending a new, corrected form, along with the instruction to use the revised verdict form, the court ensured that no confusion would result. In any event, because appellant did not object to either the original form or the court's proposed correction and instruction, any claim that either the original form or the corrected form was defective was forfeited. (See *Taylor v Nabors Drilling USA, LP, supra,* 222 Cal.App.4th at pp. 1242-1243.)

E. *JNOV/New Trial*

After the jury announced its verdict, appellant filed motions for a new trial and for a JNOV. Appellant contended the verdict was not supported by the evidence and that damages were inadequate. The court denied the motions. On appeal, she contends the jury's verdict "did not reflect the testimony and evidence."

The trial court may grant JNOV "only if the verdict is not supported by substantial evidence. The court may not weigh evidence, draw inferences contrary to the verdict, or assess the credibility of witnesses. The court must deny the motion if there is any substantial evidence to support the verdict." (*Begnal v. Canfield & Associates, Inc.* (2000) 78 Cal.App.4th 66, 72.) The standard of review on appeal is essentially the same: we consider whether "'any substantial evidence -- contradicted or uncontradicted -- supports the jury's conclusion,'" considering the evidence in the light most favorable to the party securing the verdict. (*Cabral v. Ralphs Grocery Co.* (2011) 51 Cal.4th 764, 770.)

A new trial may be granted on the ground of insufficiency of the evidence or inadequate damages only if, "after weighing the evidence[,] the [trial] court is convinced from the entire record, including reasonable inferences therefrom, that the court or jury clearly should have reached a different verdict or decision." (Code Civ. Proc., § 657; *Ryan v. Crown Castle*

NG Networks, Inc. (2016) 6 Cal.App.5th 775, 784.) The trial court may "review conflicting evidence, weigh its sufficiency, consider credibility of witnesses and draw reasonable inferences from the evidence presented at trial." (*Valdez v. J.D. Diffenbaugh Co.* (1975) 51 Cal.App.3d 494, 512; accord, *Lane v. Hughes Aircraft Co.* (2000) 22 Cal.4th 405, 412.) We, however, may reverse the denial of a new trial motion based on insufficiency of the evidence or inadequate damages "only if there is no substantial conflict in the evidence and the evidence compels the conclusion that the motion should have been granted." (*Fassberg Construction Co. v. Housing Authority of City of Los Angeles* (2007) 152 Cal.App.4th 720, 752.)

As noted, damages were disputed, and substantial evidence was presented to support the jury's conclusion that appellant's injuries were minor and largely resolved by August 2011. Dr. Nwude's reports indicated appellant had recovered and could return to normal activities after his series of treatments concluded, some four months after the accident. Her MRI was normal. Appellant testified she continued to suffer pain, expanding to her hip, and Dr. Fenton expressed the view that there could have been a flare-up when she attempted to return to normal activity, and that the initial injury could lead to hip pain. But Dr. Stahl expressed the opinion that the hip pain was the result of many years of playing tennis. The jury was not bound to credit appellant's claims of continuing pain or accept Dr. Fenton's conclusions. Credible evidence supported the determination that appellant's injuries were minor and were resolved after the treatments with Dr. Nwude.

The amount of appellant's lost earnings was also disputed. She claimed to have begun working fewer hours due to the injuries she suffered, but there was substantial evidence that she had begun to reduce her hours at an earlier point in time, that fear of losing certain public benefits for herself and her children led her to voluntarily reduce her hours, and that she had suffered a work-related injury that led to her taking time off. Moreover, she was unable to satisfactorily explain the 2013 interrogatory response indicating she had lost only $450 in earnings. The jury's conclusion of minimal lost earnings was supported by substantial evidence.

F. *Costs*

Prior to trial, respondent Cole and the Auto Club submitted an offer to settle pursuant to Code of Civil Procedure section 998 in the amount of $19,000, with each party to bear her or its own costs. After trial, Cole sought recovery of costs, including expert witness fees. Appellant asserts that the court awarded costs to Cole, but failed to include the court's cost order or the reporter's transcript of the hearing in the record.

Section 998 "authorizes a prevailing party to recover its costs from a losing party who rejected a reasonable, good faith offer to compromise," if the costs were "'actually incurred and reasonably necessary.'" (*LAOSD Asbetos Cases* (2018) 25 Cal.App.5th 1116, 1126.) "Whether [the] offer was reasonably made in good faith is left to the sound discretion of the trial court," as is the determination of what costs were reasonably necessary. (*Ibid*.) An appellate court will reverse the trial court's determination "only if it finds 'in light of all the evidence viewed most favorably in support of the trial court, no judge could have reasonably reached a similar result.'" (*Ibid*.) We perceive no basis to reverse the award, particularly as we have not been provided the record necessary to address it.

DISPOSITION

The judgment, the order denying the motion for a JNOV or a new trial, and the order awarding costs to Cole are affirmed. Cole is awarded her costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MANELLA, P. J.

We concur:

WILLHITE, J. COLLINS, J.